

### REMARKS

This responds to the Office Action mailed on January 18, 2007.

Claims 8, 15, and 20 are amended, claims 1-7 were previously withdrawn without prejudice to the Applicant; as a result, claims 8-25 are now pending in this application.

#### §101 Rejection of the Claims

Claims 8-25 were rejected under 35 U.S.C. § 101 because the Examiner asserts the invention does not fall within at least one of the four categories of patent eligible subject matter recited in 35 U.S.C. 101, process, machine, manufacture or composition of matter. The Examiner asserts that claims 8 and 20 need to have tangible results recited in the claims to be statutory and that claim 15 needs a processor or memory to execute to have a real world value for software. Applicant respectfully disagrees with this assessment and reserves the right the subsequently dispute these contentions.

The Interim MPEP Guidelines do not specifically define what it considers to be a “tangible result.” In fact, all the Guidelines state is that there needs to be a “practical application” or “final result.” Consequently, Applicant requests that the Examiner define what a “tangible result” is if the Examiner still asserts such limitations are not present in the amended claims, because Applicant respectfully cannot find any other definition in the Guidelines for what it is the Office wants for a “tangible result.” In fact, this information would be particularly helpful to the Applicant as well as other Applicants in that it is becoming increasingly difficult to discern what the Office wants with this requirement and what is wanted does in fact vary from Examiner to Examiner within the Office. This makes addressing the issue particularly troublesome and difficult for practitioners and is costly to the Applicant.

However, in the interest of expediting the prosecution Applicant has amended claims 8, 15, and 20 to address what the Examiner believes to be the concerns.

Specifically, claims 8 and 20 now positively how and what is done, the entities doing the work (nodes, etc.), and the final results produced (application data in the data store for subsequent access). Firstly, Applicant would like to reiterate that Applicant does not believe that the original claims were abstract in any manner and that they were sufficiently statutory. The original claims sufficiently detailed that application data was produced from applications that

consumed query results and this was done in a parallel processing fashion (concurrent processing). Again, however, in the interest of expediting and resolving any ambiguity, the Applicant has now made the processing clear and the final result clear (application data updated to the data store for subsequent consumption or access).

Also, claim 15 was amended to include multiple different “real world” entities, namely a processing and memory device, memory, node devices, and a network. Clearly, claim 15 now has sufficient “real world” limitations.

Accordingly, Applicant believes that the amended claims have now sufficiently addressed each of the Examiner’s concerns and that the rejections should be withdrawn. Applicant respectfully requests an indication of the same.

#### §102 Rejection of the Claims

Claims 8-25 were rejected under 35 U.S.C. § 102(b) for anticipation by Klein et al. (U.S. 6,453,313). It is of course fundamental that in order to sustain an anticipation rejection that each and every step or element in the rejected claims must be taught or suggested in the cited reference.

More specifically, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently in a single reference. *Verdegaal Bros.v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 1051, 1053 (Fed. Cir. 1987). Additionally, “[t]he identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claims.

It has also been held that “[T]he exclusion of a claimed element from a prior art reference is enough to negate anticipation by that reference.” *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771-72, 218 USPQ 781, 789 (Fed.Cir.1983).

Applicants would like to respectfully reiterate that anticipation is only proper if “[t]he identical invention must be shown in as complete detail as contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 1913, 1920 (Fed. Cir. 1989).

In Klein, the application process 60 resides on a single node of the network. It is not executed in parallel and there are not multiple instances of the application process 60 on the network. The Examiner’s attention is directed to FIG. 3 where this detail is clearly shown.

Different aspects of the application process 60 or operations are distributed by the “application process” itself is not in fact duplicated and does not appear as “multiple instances” on one or more nodes. Klein divides an application up into sub modules or operations and just one node runs the application process while sub modules process on the other nodes. Although this has some benefits, it also requires substantial programming effort to permit such an application process to be independently decomposed and processed in this manner. Often with legacy applications of an enterprise this may not even be feasible.

Applicant’s independent claims recite multiple or one or more instances of applications each instance processing in parallel on other nodes. This limitation is not in Klein in fact Klein specifically teaches that the application is divided into component pieces namely operations and the operations are then distributed but the application process itself does not appear in multiple instances over the network.

Thus, the identical invention with the identical arrangement and detail cannot be demonstrated and in fact a component is missing from Klein, namely multiple applications processing in parallel as instances of one another over multiple nodes. Thus, Applicant respectfully requests that the rejections be withdrawn and the claims allowed.

**RESERVATION OF RIGHTS**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 14-0225.


Respectfully submitted,

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Date 04/18/07

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18 day of April 2007.

KIMBERLY BROWN

Name

  
Signature